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Supreme Court of the United States

October Term, 1932

No. 53.

GREAT NORTHERN RAILWAY COMPANY,

Petitioner,

vs.

SUNBURST OIL & REFINING COMPANY and JOHN H. HAMILTON, Receiver of SUNBURST OIL & REFINING COMPANY,

Respondents.

BRIEF ON BEHALF OF PETITIONER.

W. L. CLIFT,
R. J. HAGMAN,
J. P. PLUNKETT,
Counsel for Petitioner.

St. Paul, Minn.,
October 19, 1932.

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GREAT NORTHERN RAILWAY COMPANY,

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vs.

SUNBURST OIL & REFINING COMPANY and JOHN H. HAMILTON, Receiver of SUNBURST OIL & REFINING COMPANY,

Respondents.

BRIEF ON BEHALF OF PETITIONER.

The petition filed by the Great Northern Railway Company seeking a review on a writ of certiorari of the judgment of the Supreme Court of the State of Montana in *Sunburst Oil & Refining Co. v. Great Northern Ry. Co.*, was granted by this court on October 10, 1932.

I.

The Opinions of the Court Below.

The opinion of the Supreme Court of the State of Montana, dated January 4, 1932, is reported in *Sunburst Oil & Refining Co. v. Great Northern Ry. Co.*, 7 Pac. (2nd) 927, and is found at page 25 of the record.

The opinion of the Supreme Court of the State of Montana, dated January 4, 1932, in *Montana Horse Products Company v. Great Northern Ry. Co.,* followed in the opinion in *Sunburst Oil & Refining Co. v. Great Northern Ry. Co.,* is reported in 7 Pac. (2nd) 919.

II.

Jurisdiction.

The judgment of the Supreme Court of the State of Montana was entered on January 4, 1932 (Rec. p. 25). The petition for rehearing filed by petitioner was denied February 5, 1932 (Rec. p. 45), less than three months prior to the date of the application for the writ of certiorari herein (U. S. Code, Title 28, Sec. 350).

The jurisdiction of the Supreme Court is invoked under paragraph (b) of Section 237 of the Judicial Code, as amended and re-enacted by the Act of February 13, 1925 (U. S. Code, Title 28, Sec. 344).

III.

Statement of the Case.

The statutes of the State of Montana vest in the Board of Railroad Commissioners the power and make it the duty of the Commission to make all necessary rates, charges and regulations governing the transportation of freight and passengers by railroad within that state (Secs. 3794-3796, Revised Codes of Montana, 1921). The statutes also forbid, under heavy penalties, the charging or receiving by a railroad company of a greater or less compensation for transportation services performed than that fixed by the Commission (Secs. 3804 and

3805). A method of appeal to the courts from the rates fixed by the Commission is given to carrier and shipper (Secs. 3809 and 3810). See copies of the sections referred to printed in the appendix hereto.

The Commission fixed a rate of 20½ cents per 100 pounds on crude petroleum distillate from Kevin and Sunburst to Great Falls, Montana, subject to an estimated weight of 7.4 pounds per gallon. Respondent shipped 266 carloads of this commodity from Kevin and Sunburst to Great Falls and freight charges were collected thereon at the rate of 20½ cents per 100 pounds computed by using the estimated weight of 7.4 pounds per gallon (Rec. pp. 6-10).

On April 19, 1929, respondent filed a complaint with the Commission alleging that the estimated weight provision was unjust and unreasonable (Rec. p. 10). After hearing, the Commission on October 14, 1929, entered an order in which it ordered, declared and found that the estimated weight of 7.4 pounds per gallon, was unjust and unreasonable to the extent that it exceeded 6.6 pounds per gallon. It further found that the charges paid by respondent on said 266 cars of crude petroleum distillate were unreasonable to the extent that they exceeded charges that would have accrued by the use of the estimated weight of 6.6 pounds per gallon (Rec. pp. 10 to 22).

On April 1, 1930, respondent brought an action against the petitioner in the District Court of Cascade County, Montana, to recover excess charges alleged to have been collected (Rec. pp. 1-3). The case was tried on an agreed statement of facts (Rec. pp. 7-23). On October 17, 1930, judgment was entered in favor of respondent in the amount of $3,262.25 (Rec. pp. 23-24). Petitioner perfected an appeal to the Supreme Court of Montana (Rec. p. 24). Three errors of the trial court were specified (Rec. pp. 30-31):

1. The court erred in entering judgment in favor of respondent and against the appellant in this, that under the statutes and laws of Montana the Board of Railroad Commissioners had no power to make a retroactive finding that the rate of 20½ cents per 100 pounds on crude petroleum distillate from Kevin and Sunburst to Great Falls, based upon an estimated weight of 7.4 pounds per gallon, was unjust and unreasonable.

2. The court erred in entering judgment in favor of respondent and against the appellant in this, that Chapter 257 of the Revised Codes of Montana, 1921, as enforced by the order for judgment and the judgment entered in this proceeding, deprives the appellant of its property without due process of law in violation of Article III, Section 27, of the Constitution of Montana, and of the Fourteenth Amendment to the Constitution of the United States.

3. The court erred in entering judgment in favor of respondent and against the appellant in this, that Chapter 257 of the Revised Codes of Montana, 1921, as enforced by the order for judgment and the judgment entered in this proceeding, impairs the obligation of the contracts between the respondent and the appellant relating to the transportation of the 266 carloads of crude petroleum distillate in question in violation of Article III, Section 11, of the Constitution of Montana and of Article I, Section 10, of the Constitution of the United States.

On November 9, 1931, John H. Hamilton was appointed Receiver of the respondent by an order duly made and given in the United States District Court in and for the District of Montana, and thereafter duly qualified as of said 9th day of November, 1931.

On January 4, 1932, the Supreme Court of Montana rendered a decision in which it held that both rate and weight are neces-

sary factors in determining freight charges; that the practice of using estimated weights in computing freight charges on a commodity like petroleum was not improper; that the Board of Railroad Commissioners had no power to make the finding of unreasonableness and order referred to and that respondent was not entitled to recover damages by way of reparation on account of the transportation of the 266 carloads in question. However, following its decision in *Montana Horse Products Company v. Great Northern Ry. Co.* (decided same day), the Supreme Court held that, under the doctrine of *stare decisis*, because of its misinterpretation of the statutes in a prior case (*Doney v. Northern Pacific Ry. Co.*, 60 Mont. 209, 199 Pac. 432), the judgment of the trial court should be affirmed (Rec. pp. 25-29).

In a petition for rehearing petitioner again pressed for consideration the constitutional questions raised, and called to the attention of the court the fact that its decision was contrary to the decision of this Court in *Arizona Grocery Company v. A. T. & S. F. Ry. Co., et al.*, 284 U. S. 370 (Rec. pp. 30-31). On February 5, 1932, the petition was denied (Rec. p. 45).

In view of the fact, as found by the Supreme Court of Montana, that the estimated weight of 7.4 pounds per gallon prescribed by the Commission to be used in conjunction with the rate of 20½ cents, was a necessary factor with the rate in determining the transportation charges, we have in the argument treated it as a part of the rate and have for convenience referred to the subsequent order of the Commission as one finding a rate fixed by it to have been unreasonable in the past.

IV.

Specifications of Error.

1. The Supreme Court of the State of Montana erred in entering judgment in favor of respondent and against the petitioner in this, that Chapter 257 of the Revised Codes of Montana, 1921, as enforced by the judgment entered in this proceeding, deprives the petitioner of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of the State of Montana erred in entering judgment in favor of respondent and against the petitioner in this, that Chapter 257 of the Revised Codes of Montana, 1921, as enforced by the judgment entered in this proceeding, impairs the obligation of the contracts between the petitioner and the respondent, in violation of Article I, Section 10, of the Constitution of the United States.

V.

ARGUMENT.

Points Relied Upon.

A. THE CONSTRUCTION GIVEN TO CHAPTER 257 OF THE REVISED CODES OF MONTANA, 1921, BY THE SUPREME COURT OF MONTANA, MUST BE DETERMINED BY ITS JUDGMENT IN THE CASE AND NOT BY STATEMENTS CONTAINED IN ITS OPINION.

B. CHAPTER 257 OF THE REVISED CODES OF MONTANA, 1921, AS ENFORCED BY THE JUDGMENT OF THE SUPREME COURT OF MONTANA, DEPRIVES THE PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

1. The taking by the state of the private property of one person and giving it to another without the owner's consent is not due process of law and is a violation of the Fourteenth Amendment to the Constitution of the United States.

2. The compensation received by the petitioner and paid by respondent for the transportation of the 266 carloads of petroleum was computed by the use of the rates established by the Commission and therefore became the private property of the petitioner.

3. If the subsequent order of the Commission declaring retroactively that the rate it had prescribed was unreasonable be viewed as a judicial act it does not constitute due process of law for a legislative body cannot pass judgment on its own acts.

4. If the subsequent order of the Commission be viewed as a legislative act with retrospective effect it does not constitute due process of law for a legislative body may not give retro-

spective effect to its enactments so as to deprive one of property that has vested in him under prior acts.

5. The Supreme Court of Montana has construed Chapter 257 of the Revised Codes of Montana, 1921, as giving to the Commission the power to make such a retroactive finding; therefore, Chapter 257, as construed by the Supreme Court of Montana deprives the petitioner of its property without due process of law.

C. THE SUBSEQUENT ORDER OF THE COMMISSION, IF VIEWED AS A LEGISLATIVE ACT, IMPAIRS THE OBLIGATION OF CONTRACTS BETWEEN PETITIONER AND RESPONDENT.

D. IF THE JUDGMENT OF THE SUPREME COURT OF MONTANA BE CONSTRUED AS ONE BASED SOLELY ON THE DOCTRINE OF STARE DECISIS AND NOT AS GIVING TO CHAPTER 257 OF THE REVISED CODES OF MONTANA, 1921, THE CONSTRUCTION REFERRED TO, IT DEPRIVES THE PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

A.

The construction given to Chapter 257 of the Revised Codes of Montana, 1921, by the Supreme Court of Montana must be determined by its judgment in the case and not by statements contained in its opinion.

The Supreme Court of Montana conceded all the points made by petitioner before that court. It said that the Board of Railroad Commissioners had no power to make a retroactive finding of unreasonableness and that the respondent was not entitled to recover damages by way of reparation (Rec. p. 26). In *Montana Horse Products Co. v. Great Northern Ry. Co.*, (7 Pac. 2nd 919), involving the same question and decided the

same day, it said, page 925, that it would be an anomalous situation were the Commission, acting as a quasi-judicial tribunal, permitted to find that the carrier had violated the law because it charged a rate prescribed by the Commission itself acting in its legislative capacity. It also said, page 923, that the language found in *Doney v. Northern Pacific Ry. Co.*, 60 Mont. 209, 199 Pac. 432, stating that the Commission could make such a finding, was not necessary to a decision of that case and had no proper place in the opinion. Yet in spite of these statements it held that under the doctrine of *stare decisis* it must follow the erroneous *obiter dictum* in the *Doney case, supra,* and for that reason it affirmed the judgment of the trial court (Rec. p. 28).

This is an action in tort to recover damages by way of reparation for the charging and collecting of unreasonable freight charges (*Lewis-Simas-Jones Co. v. Southern Pacific Co.*, 283 U. S. 654, 660). It is based upon a finding of past unreasonableness made by the Board of Railroad Commissioners. If the Commission had no power to make such a finding in this case respondent has no cause of action. In entering judgment in favor of respondent the trial court necessarily construed the statutes of Montana as giving to the Commission the power to make such a finding and as giving to respondent a cause of action based on such a finding. In affirming the judgment of the trial court the Supreme Court necessarily approved that construction. It is immaterial by what method of reasoning the court arrived at that decision. The fact is that the judgment is inconsistent with expressions contained in the opinion. But it is the judgment itself that determines the construction given to the Montana statutes.

B.

Chapter 257 of the Revised Codes of Montana, 1921, as enforced by the judgment of the Supreme Court of Montana, deprives the petitioner of its property without due process of law.

1. *The taking by the state of the private property of one person and giving it to another without the owner's consent is not due process of law and is a violation of the Fourteenth Amendment to the Constitution of the United States.*

Since the very foundation of our Government it has been held that where once the right to private property has become vested in a person it cannot be taken from him without compensation. *Calder v. Bull,* 3 Dallas 386; *Fletcher v. Peck,* 6 Cranch 87; *Steamship Company v. Joliffe,* 2 Wallace 450; *Osborne v. Nicholson,* 13 Wallace 654.

Since the passage of the Fourteenth Amendment such a taking of property by a state has been held to be a violation of that amendment. *Missouri Pacific R. R. Co. v. Nebraska,* 164 U. S. 403; *Chicago, Burlington & Quincy R. R. v. Chicago,* 166 U. S. 226, 235; *Union Refrigerator Transit Co. v. Kentucky,* 199 U. S. 194; *Ettor v. Tacoma,* 228 U. S. 148; *C. St. P. M. & O. Ry. Co. v. Holmberg,* 282 U. S. 162; *Forbes Boat Line v. Board of Commissioners,* 258 U. S. 338.

2. *The compensation received by the petitioner and paid by respondent for the transportation of the 266 carloads of petroleum was computed by the use of the rates established by the Commission and therefore became the private property of the petitioner.*

There is no dispute as to the fact that the freight charges received by petitioner and paid by petitioner were computed by

the use of the freight rate and estimated weight fixed by the Commission. It is shown by the record (Rec. pp. 6-10) and is stated as a fact in the opening paragraph of the opinion of the Supreme Court of Montana (Rec. p. 25). The contracts for the transportation were valid under the then existing law and order of the Commission; they were fully executed; the compensation provided for had been paid; nothing remained to be done by the petitioner to perfect its right to such compensation; its right was vested. *Steamship Company v. Joliffe, supra,* pp. 457 and 458. There is no analogy between this case and one in which the carrier initiates a rate and a commission subsequently finds that it was unreasonable when collected. The right to retain such compensation is subject to the condition that it was reasonable and if it is later found unreasonable by the Commission the carrier must respond in damages to the shipper. *Arizona Grocery Co. v. A. T. & S. F. Ry. Co.,* 284 U. S. 370. Here the reasonableness of the rate was determined by the Commission before the compensation was collected.

3. *If the subsequent order of the Commission declaring retroactively that the rate it had prescribed was unreasonable be viewed as a judicial act it does not constitute due process of law for a legislative body cannot pass judgment on its own acts.*

It is well settled that when a commission, or other similar creature of the legislature, finds a rate unreasonable which has been charged and collected in the past, it is exercising a quasi-judicial function and when it determines what rate shall be charged in the future it is exercising a quasi-legislative function. *Interstate Commerce Commission v. Ry. Co.,* 167 U. S. 479, 499; *Great Northern Ry. Co. v. Merchants Elev. Co.,* 259 U. S. 285, 291; *Louisville & Nashville Ry. Co. v. Garrett,* 231

U. S. 298, 305. When the Commission established this rate it exercised a quasi-legislative function and when it found the rate unreasonable it exercised a quasi-judicial function.

But courts cannot legislate and pass judgment thereon and legislative bodies cannot render judgment upon their legislative acts. In either case neither the proceeding nor the result would be due process of law. *Western Union Tel. Co. v. Myatt,* 98 Fed. 335, 354. As Chief Justice Kent said in *Dash v. Van Kleeck,* 7 Johns 477, it is a well settled axiom in which theorists and practical statesmen concur, that the union of these two powers is tyranny. Tyranny cannot be due process of law. Or as was said of the Interstate Commerce Commission by this court in the case of *Arizona Grocery Co. v. A. T. & S. F. Ry.,* 284 U. S. 370, the Commission, while not bound by the rule of *res judicata,* was bound to recognize the validity of the rule of conduct prescribed by it and not to repeal its own enactment with retroactive effect. It could repeal the order as it affected future action, and substitute a new rule of conduct as often as occasion might require but this was obviously the limit of its power, as of that of the legislature itself.

4. *If the subsequent order of the Commission be viewed as a legislative act with retrospective effect it does not constitute due process of law for a legislative body may not give retrospective effect to its enactments so as to deprive one of property that has vested in him under prior acts.*

As previously stated, when a commission finds a rate unreasonable which has been charged in the past it is exercising a quasi-judicial function. But if the subsequent order in this case be viewed as a legislative act with retrospective effect it still does not constitute due process of law for, as we have seen, a legislature has no power to declare retroactively an act to be

unlawful which was lawful when committed or to deprive one of property vested in him under a prior act of the legislature. *Calder v. Bull*, 3 Dallas 386, *Fletcher v. Peck*, 6 Cranch 87; *Steamship Company v. Joliffe*, 2 Wallace 450; *Osborne v. Nicholson*, 13 Wallace 654; *Missouri Pacific R. R. v. Nebraska*, 164 U. S. 403; *Chicago, Burlington & Quincy R. R. v. Chicago*, 166 U. S. 226, 235; *Ettor v. Tacoma*, 228 U. S. 148; and *Forbes Boat Line v. Board of Commissioners*, 258 U. S. 338. Its power is limited to prescribing a rule of conduct for the future. *Arizona Grocery Co. v. A. T. & S. F. Ry. Co.*, 284 U. S. 370.

5. *The Supreme Court of Montana has construed Chapter 257 of the Revised Codes of Montana, 1921, as giving to the Commission the power to make such a retroactive finding; therefore, Chapter 257, as construed by the Supreme Court of Montana deprives the petitioner of its property without due process of law.*

From the foregoing premises we believe it follows that Chapter 257 of the Revised Codes of Montana, 1921, as construed by the Supreme Court of that state, gives to the Commission the power to make the retroactive finding made in this case and gives to the respondent a cause of action against the petitioner based on such finding and thereby deprives the petitioner of its propery without due process of law.

C.

The subsequent order of the Commission, if viewed as a legislative act, impairs the obligation of contracts between petitioner and respondent.

The prohibition contained in Article I, Section 10, of the Constitution of the United States applies to executed as well as executory contracts. *Fletcher v. Peck*, 6 Cranch 87, *Dartmouth*

College v. Woodward, 4 Wheaton 518; *Green v. Biddle,* 8 Wheaton 1; *Ogden v. Saunders,* 12 Wheaton 213; *Von Hoffman v. City of Quincy,* 4 Wallace 535. It extends to decisions of a Board of Railroad Commissioners. *L. & N. Ry. v. Garrett,* 231 U. S. 298; *King Mfg. Co. v. Augusta,* 277 U. S. 100.

The petitioners and respondents entered into valid contracts for the transportation of the 266 carloads of petroleum at the rate of compensation fixed by the Commission. If the subsequent order of the Commission finding such rate unreasonable is viewed as a legislative act with restrospective effect it impairs the obligation of such contracts in violation of the Constitution of the United States.

D.

If the judgment of the Supreme Court of Montana be construed as one based solely on the doctrine of Stare Decisis and not as giving to Chapter 257 of the Revised Codes of Montana, 1921, the construction referred to, it deprives the petitioner of its property without due process of law.

The Supreme Court of Montana held that the Commission could not lawfully declare retroactively that a rate prescribed by it was unlawful (Rec. p. 28). The rates charged by the petitioner for the transportation of the 266 carloads of petroleum were therefore lawful rates (*Arizona Grocery Company v. A. T. & S. F. Ry. Co.,* 284 U. S. 370) and the compensation received for such transportation became the lawful vested property of the petitioner. *Steamship Company v. Joliffe,* 2 Wallace 450.

This is an action in tort (*Lewis-Simas-Jones Co. v. Southern Pacific Co.,* 283 U. S. 654, 660) to recover damages for the charging and collecting of unlawful charges for the transportation of said petroleum. Since the charges collected were not

unlawful no legal right of the respondent was violated and no tort was committed. Consequently the taking of the petitioner's property and giving it to the respondent to compensate the latter for a tort which was admittedly not committed is arbitrary and constitutes the taking of petitioner's property without due process of law. *Missouri Pacific R. R. Co. v. Nebraska,* 164 U. S. 403.

Such violation of the petitioner's constitutional rights cannot be justified by the doctrine of *stare decisis.* No real protection would be afforded by the Constitution if a precedent for the violation of one's constitutional rights could be established in a case between other parties and be then held to be controlling forever thereafter, especially if, as in this case, the precedent were established in what is admitted to be erroneous *dictum* in a previous case. The doctrine of *stare decisis* is not applicable to a decision which has no relation to rights of property, *The Genesee Chief v. Fitzhugh,* 12 Howard 443, 458, and a clearly erroneous decision should be overruled, *Barden v. Northern Pacific Ry. Co.,* 154 U. S. 288, 321, 322. Courts are bound by their very nature to declare what the law is and has been and not what it shall be in the future, and if they were absolutely bound by their prior decisions they would be without the power to correct their own errors. *Wood v. Brady,* 150 U. S. 18, 23.

The Supreme Court of Montana admitted that the precedent it followed was erroneous *dictum* but held that it was bound to follow the erroneous *dictum* because it measured the rights of plaintiff (respondent) and prescribed its remedy. Aside from the obvious answer that one cannot base any rights upon erroneous *dictum,* it is clear that such *dictum* did not measure respondent's rights, for its rights were simply to have its property transported at reasonable rates. The erroneous *dictum*

did not enlarge or modify such rights in any respect; it merely purported to give the respondent an added remedy for the enforcement of such rights. Section 3810 of the Revised Codes of Montana, 1921, gave the shipper a right to appeal to the courts from an order of the Commission fixing rates. The erroneous *dictum* referred to purported to give the shipper the additional remedy of appealing to the Commission itself and obtaining a retroactive finding of unreasonableness. The Supreme Court of Montana now finds that a shipper has but one remedy, viz., the appeal to the courts provided in Section 3810. A party has no vested right to a particular remedy or mode of procedure. *Ogden v. Saunders,* 12 Wheat 213; *Brainard v. Hubbard,* 12 Wall. 1; *League v. Texas,* 184 U. S. 156; *Backus v. Fort Street Union Depot Co.,* 169 U. S. 557; *Luria v. U. S.,* 231 U. S. 9.

Since the erroneous *dictum* did not relate to a right of property but merely to a remedy the doctrine of *stare decisis* would have no application even if the same force were given to *dictum* in a previous case as to a rule of law necessarily decided in such case. In *Pollock v. Farmers' Loan & Trust Co.,* 157 U. S. 429, this court said, p. 574:

> "Doubtless the doctrine of *stare decisis* is a salutary one, and to be adhered to on all proper occasions, but it only arises in respect of decisions directly upon the points in issue."

Inasmuch as the compensation received by the petitioner was lawful and the petitioner did not violate any legal right of the respondent, the judgment of the Supreme Court of Montana against the petitioner and in favor of the respondent, based upon the erroneous application of the doctrine of *stare decisis* to admittedly erroneous *dictum,* is arbitrary and deprives petitioner of its property without due process of law.

CONCLUSION.

It is, therefore, respectfully submitted that Chapter 257 of the Revised Codes of Montana, 1921, as construed by the Supreme Court of Montana is repugnant to the Constitution of the United States; that the judgment entered in the court below deprives the petitioner of its property without due process of law; and that the order of the Board of Railroad Commissioners, finding that the charges paid by the respondent on the 266 carloads of petroleum in question were unreasonable, impairs the obligation of contracts between the petitioner and the respondent; and the petitioner respectfully prays that the judgment of the Supreme Court of the State of Montana in the case numbered and entitled on its docket No. 6843, Sunburst Oil & Refining Company, a corporation, respondent, v. Great Northern Railway Company, a corporation, appellant, may be reversed by this Honorable Court and that the petitioner may have such other and further relief as may seem meet and just.

Respectfully submitted,

W. L. CLIFT,
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Counsel for Petitioner.

St. Paul, Minn.,
October 19, 1932.

APPENDIX.

Excerpts from Chapter 257, Revised Codes of Montana, 1921.

Sec. 3794. *Power of board to fix rates, schedules, and classifications.* The power and authority is hereby vested in the said board, and it is hereby made its duty to adopt, as soon as practicable after the organization of the board, all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this act. The said board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said board shall also have the power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads. The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by said board. And it shall be within the province of the board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana,

or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa; and in proper cases, where it appears that the United States interstate commerce commission law has been violated, it is hereby made the duty of said board to make complaint to the interstate commerce commission of the United States, and to aid such commission in any investigation it may make concerning violations of the United States law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people.

Sec. 3795. *Making schedules effective.* When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation, or common carrier who may desire it, an opportunity to make an explanation or showing, or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification. All classifications and

rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board. Each railroad affected by the provisions of this act shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type, showing all classifications and rates fixed and established by the said board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than one hundred dollars nor more than five hundred dollars for each day that such failure or neglect is continued.

Sec. 3796. *Power to alter classification or rate—Hearing complaint.* The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, and such amended, altered, or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said board shall not make or establish any increase or raise in the rate of charge for the transportation of freight by any railroad within the state of Montana, unless ten days' notice be published in two daily papers, one of which shall be published in the city of Helena, setting forth in said notice that at a certain time and place the board will proceed to make and establish such increase or raise in the rate of charge for the transportation of freight; and the board shall at such time and place hold a public hearing thereon, at which time and place the public generally, or any person, firm, or corpora-

tion, shall be given an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held. The said board must, within forty days after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

Sec. 3804. *Prohibition against rebates and discrimination.* If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback, or other device, shall charge, demand, or receive from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said board of railroad commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than five hundred dollars nor more than two thousand dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

Sec. 3805. *Discrimination in rates and charges.* If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand, or receive from any person, company, firm, or corporation, a greater rate, charge, or compensation than that fixed and established by the said board of railroad commissioners for the transportation of freight, passenger, or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight-car, or for any other service performed, or to be performed by it, such railroad and its

agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana a sum not less than five hundred dollars nor more than two thousand dollars.

Sec. 3809. *Action to determine reasonableness of rates or classification.* Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate toll, charge, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

Sec. 3810. *Action by shippers.* Any shipper, or other person interested, may bring an action in the district court of the county where the principal office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board of railroad commissioners as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order, made, fixed, or established by the board under the provisions of this act, is just and reasonable;

provided, that until the final decision in any such action, the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive, except as herein otherwise provided; and provided further, that in any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes.